

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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ARTHUR G. KEENEN, JR. and MICHAEL PAIGE,

Petitioners-Plaintiffs,

PETITION-COMPLAINT

-against-

Index No.

THE NEW YORK STATE PAROLE BOARD, by
TANA AGOSTINI, ELLEN ALEXANDER and
WILLIAM SMITH, JR. as Commissioners,

Respondents-Defendants.

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Petitioners-Plaintiffs, by and through their attorneys, as and for their Petition-Complaint against the above-captioned Respondents-Defendants, allege upon information and belief as follows.

PRELIMINARY STATEMENT

1. This Litigation is filed since the victims of murders should have equal respect and equal rights as those accorded to murderers.
2. A murderer should not be tried by someone with an appearance of impropriety or any conflict of interest. Arthur Keenen and Michael Paige, the Petitioner-Plaintiffs as Victims (the "Victims") of this convicted Murderer Judith Clark (the "Murderer") were never advised of this impropriety by the Parole Board Member who made the deciding vote to set this Murderer free from prison.
3. A murderer should not be judged by those whose powers were improperly delegated to

them to make a decision. The Parole Panel that decided to let this Murderer free had such an improper delegation of statutory power. The Victim Michael Paige of this Murdered could not stop this improper delegation of statutory powers.

4. This Murderer was accorded prompt notice of any decision impacting on a Parole Board Decision and provided with a right to appeal. The Victims of this Murderer were never accorded such respect or rights.

5. This Murderer would never have a critical issue decided without proper and prompt notice of the events so as to obtain judicial relief. The Victims of this Murderer were only advised of her release after 5:00PM on a Friday when there was no immediate access to a Court to seek relief.

6. Because the foregoing equal respect and rights to this Murderer were not accorded to provide equal respect and rights to the Victims of this Murderer, this litigation is filed at this time.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is based upon the New York State Constitution.
2. This action is brought pursuant to the statutory powers of the Supreme Court to decide matters within its jurisdiction.
3. This is a Hybrid Proceeding seeking relief pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”).
4. Additionally and alternatively, Declaratory relief is also authorized pursuant to CPLR Section 3001.

5. Venue is proper pursuant to CPLR § 506(b) as the Body taking the action herein referenced, the Respondents-Defendants, have a place of business within the County in which this litigation is brought.

6. This litigation is filed by the Attorneys for the Petitioners-Plaintiffs on a *pro bono publico* basis.

7. This litigation is filed immediately after the Victims were given notice of the actual release of this Murderer.

PARTIES

8. At all times relevant herein the Petitioner-Plaintiff Arthur G. Keenen, Jr. (“Victim Keenen”) was a Police Officer with the then Nyack Police Department and was present at the time of the 1981 events as set forth herein when two Nyack Police Officers were murdered.

9. At all times relevant herein the Petitioner-Plaintiff Michael Paige (“Victim Paige”) is and was the son of the late Peter Paige who was murdered at the time of the 1981 events set forth herein.

10. At all times relevant herein the Respondent-Defendant New York State Parole Board (the “Board”) is a duly organized municipal body in the State of New York acting pursuant to law and within the New York State Department of Corrections and Community Supervision.

11. At all times relevant herein, the Board has twelve (12) members appointed to serve as Board Members and Commissioners pursuant to New York State law.

12. At all times relevant, the Board has an office for the conduct of business at 1134 New Scotland Avenue, Albany, New York 12208.

13. At all times relevant herein, Tana Agostini, Ellen Alexander and William Smith, Jr. were Board Members and Commissioners assigned to a Panel (the “Panel”) that reviewed the

application for Parole by this Inmate Murderer with a Department Identification Number 83G0313.

14. The Murderer was convicted of the Murder of Peter Paige in Nanuet, New York and the Murder of then Nyack Police Department Officers Sgt. Edward O'Grady and Officer Waverly "Chipper" Brown at the entrance to the New York State Thruway in Nyack, New York.

15. All of the Murders for which this Murderer was convicted took place on October 20, 1981 and the Victims of said Murderer have standing to bring this proceeding.

16. The Victim Keenen was physically present at the time his fellow Police Officers, Sgt. Edward O'Grady and Officer Waverly "Chipper" Brown were gunned down and killed by the actions of this Murderer and others.

17. The Victim Keenen was injured during the Murders of his fellow Nyack Police Department Members by action for which the Murderer was convicted of said Murders.

BACKGROUND OF LITIGATION

18. At all times relevant, the Murderer was part of a self-described gang of so-called social revolutionaries who committed the aforesaid Murders after stealing \$1,600,000 from a Brinks Vehicle during a robbery at the Nanuet Mall in Rockland County, New York.

19. During the commission of the Murders of the two Nyack Police Officers, the Murderer drove a get-away vehicle that crashed into a wall on North Broadway, Nyack, New York and thereafter tried reaching for a gun while pretending to surrender to another Police Officer after the two Nyack Police Department Officers had already been murdered.

20. As a result of that criminal activity, this Murderer was sentenced to serve a 75-years to life sentence that was commuted to 35 years to life by Governor Andrew Cuomo in December 2016.

21. Prior to the events in this litigation, this Murderer sought Parole, but was denied Parole and the Murderer unsuccessfully sued the Board in December 2017 to have her receive Parole.

22. The Murderer again sought Parole and in or about April 3, 2019 the aforesaid Panel considered and decided the Parole application of the Murderer (the “Decision”).

23. The Decision of the Panel was 2-1 in favor of granting Parole to the Murderer with Panel Members Tana Agostini and Ellen Alexander voting in favor of Parole and Panel Member William Smith, Jr. voting against Parole for the Murderer

24. The deciding vote by the Panel to grant Parole to the Murderer was made by Panel Member Tana Agostini.

25. It was the independent determination of the three-member panel to grant Parole to this Murderer, and not a statutorily required determination made by the full twelve-member Parole Board.

26. Panel Member Agostini is married to a convicted murderer who was sentenced to 25 years to life for a murder committed in New York State.

27. Panel Member Agostini previously worked as a New York State Assembly Staff Person dealing extensively with New York State Prison and Parole issues.

28. Panel Member Agostini previously worked with former Parole Board Chairman Robert Dennison to win the release of said convicted murderer in 2013, the person that Panel Member Agostini is married to at this time.

29. Panel Member Agostini at the time of the Panel Decision for the Murderer did not properly and publicly disclose her prior work with the Parole Board or her Husband’s status as a convicted murderer released from incarceration through actions of the Parole Board previously.

AS AND FOR A FIRST CLAIM FOR RELIEF

30. Petitioners-Plaintiffs Victims repeat and reallege each and every allegation in paragraphs “1” through “29” as though set forth in full herein.

31. The actions of Respondents-Defendants by a 2-1 vote without proper public disclosure on the record of any potential conflicts borders on impropriety.

32. New York Administrative Procedure Act § 303 provides the following, in pertinent part:

The agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

33. The Panel Member Agostini fundamentally failed to comply with the provisions of the aforementioned statutory requirement.

34. The foregoing conduct should be so declared by this Court and the Panel Decision vacated as the Decision borders on an impropriety.

35. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of Respondents-Defendants to grant Parole to this Murderer is *ultra vires* and otherwise improper action that should be enjoined as well as being so declared illegal.

AS AND FOR A SECOND CLAIM FOR RELIEF

36. Petitioners-Plaintiffs Victims repeat and reallege each and every allegation in paragraphs “1” through “35” as though set forth in full herein.

37. The actions of Respondents-Defendants in granting Parole to this Murderer was arbitrary and capricious, a violation of lawful procedure and an abuse of discretion.

38. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of the Respondents-Defendants violate the applicable law and is otherwise improper action that should be enjoined as well as being so declared illegal.

AS AND FOR A THIRD CLAIM FOR RELIEF

39. Petitioners-Plaintiffs Victims repeat and reallege each and every allegation in paragraphs “1” through “38” as though set forth in full herein.

40. The Respondents-Defendants have a procedure under 9 NYCRR 8006.1 for an appeal to be taken by a final determination of the Board.

41. That appeal procedure does not provide for any notification to the Victims of this Murderer regarding any Board Decision or for any appeal process for the Victims such as the case herein.

42. That appeal procedure does provide for notification to this Murderer involved in the Board Decision as well as any attorney for said Murderer at 9 NYCRR 8006.1(b).

43. That appeal procedure does not provide for any appeal rights Victims of this Murderer.

44. Notice of any perfected appeal or any Panel Decision regarding any inmate such as this Murderer, pursuant to 9 NYCRR 8006.4 is not made public nor are any appeal rights provided to the Victims.

45. In this matter a full copy of the Panel Decision was not provided to the Petitioner Paige except with a note from the Director of the Office of Victim Assistance, “Sorry this looks messy but I had to cut and paste the decision from multiple screens”.

46. The Board has a practice and policy of not releasing a full and proper copy of the Panel Decision to Petitioner Paige.

47. The Board has a practice and policy of not releasing a full and proper copy of the Panel Decision for 120 days after the Decision is rendered.

48. The Decision for this Murderer is not currently published in a timely manner by the Board for the Victims to review and that practice and policy of the Board is contrary to the Victims interest to know the actions of the Board and to timely challenge said actions.

49. For any review of this Panel Decision pursuant to the statutory mandates of Executive Law, Section 259, the Panel Decision needs to be promptly disseminated to Victims as a matter of practice so a review of all aspects of the Decision can be made for meaningful judicial review by the Victims.

50. The Board has a practice and policy as aforesaid stated that allows for the release from incarceration of this Murderer before there is a full and fair opportunity for review of the Panel Decision and filing of a comprehensive judicial challenge by the Victims.

51. The time frame for challenging this Murderer's Decision is 120 days and the failure by the Board to promptly provide notice to these Victims herein is arbitrary and capricious action, an abuse of discretion, violates lawful procedure and an act of impropriety.

52. The foregoing policy and practice of the Board as to these Victims prohibits an opportunity for meaningful judicial review by these Victims to be informed of all actions of the Board with regard to the release of this Murderer.

AS AND FOR A FOURTH CLAIM FOR RELIEF

53. Petitioners-Plaintiffs Victims repeat and reallege each and every allegation in paragraphs "1" through "53" as though set forth in full herein.

54. The practices and procedures of the Respondents-Defendants herein by making its Panel Decision in private and without notice to the Victims as well as the public violates the

provisions of the New York State Open Meetings Laws of New York State.

55. As such, the actions of Respondents-Defendants herein should be declared null and void in granting the Murderer Parole by its Decision.

56. No other application has been made for the relief except as requested herein.

AS AND FOR A FIFTH CLAIM FOR RELIEF

57. Petitioners-Plaintiffs Victims repeat and reallege each and every allegation in paragraphs “1” through “56” as though set forth in full herein.

58. The actions of Respondents-Defendants in granting Parole to the Murderer was arbitrary and capricious and in violation of lawful procedure and must be declared null and void.

59. The Respondents-Defendants have a procedure under the subsections of 9 NYCRR 8002 to interview and grant or deny an inmate parole such as the Murderer.

60. The decision of whether to grant an inmate parole requires the consideration and determination of the entire Board, pursuant to the subsections of 9 NYCRR 8002.2.

61. The Board failed to fulfill its statutory and regulatory obligations that govern a determination to grant parole and its Decision is fatally flawed as a matter of law and must be declared null and void as to this Murderer.

62. The Board is required to consider “risk and needs principles” in “making a release determination” pursuant to 9 NYCRR 8002.2(a).

63. The Board failed to properly and fully consider the risk and needs principles in making it release determination for this Murderer and Decision and therefore must be declared null and void.

64. The Board is required to “consider...factors in making a release determination” pursuant to 9 NYCRR 8002.2(d).

65. The Board failed to consider the relevant factors in making its release determination for this Murderer in its Decision and the Decision must be declared null and void as a matter of law.

66. The decision of whether to release an inmate such as the Murderer following its interview and deliberations is reserved to the Board pursuant to 9 NYCRR 8002.3(a).

67. The Board improperly and unlawfully delegated its statutory and regulatory obligations underlying this Decision to release this Murderer and the Decision must be declared null and void as a matter of law.

68. The Respondents-Defendants acted improperly and unlawfully in having the Panel, and not the Board, determine the Decision to release this Murderer.

RELIEF SOUGHT

WHEREFORE, the Petitioners-Plaintiffs demand Judgment against the Respondents-Defendants as follows; to declare and determine that the Decision regarding this Murderer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that borders on being an impropriety; that the failure to publicly and promptly post the Decision of the Board regarding this Murderer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that border on being an impropriety; that the Board failed to issue its Decision in accordance with its statutory and regulatory obligations when it unlawfully delegated its decision making authority to the Panel; and that the Board be preliminarily and permanently enjoined from allowing any determinations or decision on a Parole Application without full disclose on the public record of any potential conflicts of interests of the Respondents-Defendants; remanding the application for Parole of the Murderer back to a Panel whose Members have no conflict of interest or appearance of any impropriety; by having that

newly formed Panel absent of conflicts of interest or appearance of impropriety provide an unadulterated recommendation to the Board so that the Board may lawfully exercise its statutory and regulatory obligations and issue a non-defective decision; and granting such other, further and different relief as to this Court seems just, proper and equitable under the circumstances herein including but not limited to joining any interested party or person to this proceeding..

Dated: May 13, 2019
White Plains, New York

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